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can afford to continue the trials as long as the courts do not penalize them for violation of the statute. This does not make respect for law, and possibly it might have been better for all concerned if the court had at once insisted that the railroad must completely separate itself from the mining and selling of coal. Apparently, all the stock in an independent coal company might have been sold to stockholders of the railroad company, provided the new company had been actually independent and free from any control by the corporation owning and operating the railroad. By this time much of such stock would have changed hands, so that the stockholders of the two companies would have been far from identical. This the railroad companies evidently did not, and do not, desire. How can they let go, and also keep hold, seems the problem they are still trying to solve. How long will the courts give them to work on it? For previous notes on the various attempts made, see 14 MICH. L. REV. 49, 19 MICH. L. REV. 221.

CONSTITUTIONAL LAW—CEDAR RUST LAW VALID EXERCISE OF THE POLICE POWER.—The legislature of Virginia passed what is known as the Cedar Rust Law, providing for the destruction of red cedar trees to prevent infection of adjacent apple orchards. The state entomologist was required to make a preliminary investigation. If he ordered the trees cut down, the owner was allowed an appeal to the circuit court of the county where the trees were located. The trees could not be destroyed until such hearing was finished. The act also provided for compensation to be paid to the owner of the destroyed trees. This appeal was brought as provided for by the statute, and the owners assailed the constitutionality of the act on the ground that it was a taking of property without due process of law. *Held,* a valid exercise of the police power. *Bowman* v. *Virginia State Entomologist* (Va., 1920), 105 S. E. 141.

The Fourteenth Amendment to the Federal Constitution was not designed to interfere with the power of the state to prescribe regulations to promote the health, peace, morals, education and good order of the people, and to legislate so as to increase the industries of the state, develop its resources, and add to its wealth and prosperity. *Barbier* v. *Connolly,* 113 U. S. 27. There are, of course, limits beyond which such legislation cannot legally go. If the act, therefore, has no real or substantial relation to the above objects, or if it is a palpable invasion of rights secured by the fundamental law, the courts may, and it is their duty so to adjudge, and thereby give effect to the constitution. *Mugler* v. *Kansas,* 123 U. S. 623. But the legislature is allowed a wide range of discretion in the matter, because, being familiar with local conditions, it is primarily the judge of the necessity of such enactments. Unless the act in question is unmistakably and palpably in excess of the legislative power there is no ground for judicial interference. *McLean* v. *Arkansas,* 211 U. S. 539. In the instant case it was clearly for the public interest that apple orchards should be protected. It is not a case of injury to human beings in the same proportion as is the menace of human disease, but the principles involved are the same in both instances. A great many statutes have been passed by Congress and the state legislatures, in the exer-

cise of the police power, for preventing disease among animals. The decisions are based on the effect of the disease on the animal industry itself. See note to 43 L. R. A. (N. S.) 1066, and cases therein cited. So also have statutes been passed to prevent and eradicate diseases among agricultural growths of various sorts, including orchards. See *State* v. *Boehm,* 92 Minn. 374, where a statute which forbade owners from letting certain weeds go to seed was upheld. In *Balch* v. *Glenn,* 85 Kan. 735, a statute was involved which provided for the extermination of the San José scale and other orchard pests. It was held that that was an appropriate exercise of the police power. For other statutes of a similar nature which have been held constitutional, see *State* v. *Nelson,* 22 S. D. 23; *State* v. *Main,* 69 Conn. 123; *Colvill* v. *Fox,* 51 Mont. 72; *Louisiana State Board* v. *Tanzmann,* 140 La. 756, and *Los Angeles Co.* v. *Spencer,* 126 Cal. 670. It was not necessary to the validity of the statute in the instant case that compensation be provided. *Commonwealth* v. *Alger,* 7 Cush. (Mass.) 53. Neither is the statute invalid because certain persons derive special benefit from it, so long as all persons subject to it are treated alike under the same conditions. *Barbier* v. *Connolly, supra.*

CONSTITUTIONAL LAW—CONSTITUTIONALITY OF STATUTE TO CONSERVE NATURAL GAS.—A statute of Wyoming declares that the use of natural gas for products where the gas is burned without the heat being fully and actually applied for other manufacturing or domestic purposes is wasteful and shall be unlawful when the gas well is located within ten miles of any town or industrial plant. It is aimed, very evidently, at the carbon black industry. The plaintiff, a carbon black company, contending that the statute was beyond the police power of the state and is discriminatory, sought an injunction to prevent the officers of the state from enforcing the act. *Held,* the statute is within the police power of the state, and injunction refused. *Walls et. al.* v. *Midland Carbon Co. et al.* (U. S. Sup. Ct., 1920), 41 Sup. Ct. Rep. 118.

The first problem in the principal case is the determination of whether the conservation of natural gas or the prohibition of its waste is within the police power of the state or is an arbitrary interference with private rights. The nature of gas is peculiar. Unlike other minerals, it possesses the power to move about. It has been held that the owners of the surface over a gas field, while they have the exclusive right on their land to sink wells for the purpose of extracting oil and gas, have no right of property therein until, by actually bringing the oil and gas to the surface, they have reduced these to physical possession. *Townsend* v. *State,* 147 Ind. 624. But see 18 MICH. L. REV. 463, *et seq.* The use by one surface owner affects the use of other owners and an excessive use by one diminishes the use by others. Hence it has been held that the police power of the state can be exercised for the purpose of protecting all the collective owners, by securing a just distribution of their privilege to reduce to possession and to reach the same end by preventing waste. *Ohio Oil Co.* v. *Indiana,* 177 U. S. 190. Moreover, the public as well as the surface owners have an interest to prevent the waste of oil and gas, because in the preservation of these the well-being and prosperity of the entire community is largely involved. *Townsend* v. *State, supra.* A